

**Regional Water Quality Control Board  
Central Valley Region  
Board Meeting – 7-8 June 2012**

**Response to Written Comments for Lamont Public Utility District,  
Wastewater Treatment Facility  
Tentative Waste Discharge Requirements  
And  
Tentative Cease and Desist Order**

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At a public hearing scheduled for 7 and 8 June 2012, the Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) will consider adoption of Waste Discharge Requirements (WDRs) and a Cease and Desist Order (CDO) for discharges from the Lamont Public Utility District (District) Wastewater Treatment Facility (WWTF). This document contains responses to written comments received from interested parties regarding the tentative WDRs and CDO initially circulated on 23 March 2012. Written comments from interested parties were required by public notice to be received by the Central Valley Water Board by 27 April 2012 to receive full consideration. Comments were received by the District, Community Recycling & Resource Recovery, Inc. (Community Recycling), the Center on Race, Poverty & the Environment (Center) and the Committee for a Better Arvin (CBA), and Central Valley Clean Water Association (CVCWA).

Written comments from the above interested parties are summarized below, followed by the responses of Central Valley Water Board staff. Based on the comments, Central Valley Water Board staff did make some changes to the tentative WDRs and CDO. Central Valley Water Board staff also made some changes to correct typographical errors and to improve clarity.

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**LAMONT PUBLIC UTILITY DISTRICT (DISTRICT) COMMENTS**

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On 27 April 2012, Nick Turner, District Engineer, submitted written comments on the tentative WDRs.

Larry F. Peak, attorney at law, on behalf of District, submitted comments regarding the tentative WDRs and CDO as follows:

- 26 April 2012 – Response to Tentative Order (April Letter),
- 27 April 2012 – Supplemental Petition and Response to Tentative Order, and
- 30 April 2012 – Corrected Supplemental Petition and Response to Tentative Order (Corrected Supplemental Petition Letter).

Salient comments from the above documents are paraphrased below.

**District Comments – Comment No. 1:** The District Engineer's letter states the influent flow meter was recalibrated in late 2011 and is now recording correct influent flows to the WWTF. Based on new flow data, the average daily influent flows are about 1.4 mgd. The District requests that Finding 13 of the tentative WDRs be updated to reflect this new, up-to-date information.

**RESPONSE:** The requested changes have been made.

**District Comments – Comment No. 2:** The District Engineer's letter notes Provision 25 of the tentative WDRs requires the District to remove sludge from aeration pond no. 2 and includes a time schedule for the District to comply with this task. The letter states removal of sludge from aeration pond No. 2 has been completed. The District requests that Provision 25 be removed to reflect updated conditions at the WWTF.

**RESPONSE:** The provision has been modified to acknowledge that the sludge has been removed, and to address the final disposal of the sludge.

**District Comments – Comment No. 3:** The District Engineer's letter states that Attachment B – Process Flow Diagram in the tentative WDRs incorrectly depicts sludge removal as sludge being removed from the facultative ponds instead of the aerated ponds. The letter requests that the Process Flow Diagram be corrected.

**RESPONSE:** The requested change has been made.

**District Comments – Comment No. 4:** The documents submitted by Mr. Peake, Esq. generally object to the tentative CDO, Item 3, that puts the District on a compliance schedule to secure adequate and reliable effluent disposal capacity for 3.25 million gallons per day (mgd), which is the reported design capacity of the WWTF. The documents also generally object to the requirement in the tentative WDRs for the District to have a contingency plan, should Community Recycling stop accepting the District's wastewater. Page 12 of the District's 26 April letter states that "...the District is unaware of any 'Contingency Plan' utilized by a Kern County entity exists as being requested" and uses City of Bakersfield and Kern Sanitation Authority as examples.

**RESPONSE:** Staff recommends retaining the requirement that the District ensure a contingency plan for sufficient disposal capacity, should the recycling operation stop accepting wastewater. Under the current arrangement, the District is entirely reliant on the continued operation of the recycling facility. All of the District's wastewater is provided to Community Recycling for disposal, mostly at its composting facility, which is adjacent to the WWTF on land owned by the District. The risk in this arrangement was illustrated last November, when Kern County attempted to revoke the Conditional Use Permit (CUP) for the composting facility. Without the CUP, Community Recycling could not legally receive the District's wastewater. At the time, the District claimed that it only had 46 days of effluent storage available, after which its ponds would overtop, resulting in uncontrolled discharges to the surrounding community. Community Recycling was able to obtain a stay of the County's revocation, and the threat of uncontrolled discharges has been temporarily abated. However, the risk still remains. Community Recycling is a private business that may choose to cease composting operations at the site for a variety of reasons. Though the District has stated that it could take over the composting operation itself, or it could

install a new operator, the District has not presented the Board with an executable plan that would allow it to do so on a quick timeline. In addition, if the Kern County Superior Court allows the revocation to stand, or if Kern County elects to revoke the CUP for other reasons at some time in the future, the District would not have a place to send its wastewater. Securing new arrangements could entail an application for a new CUP and/or the preparation of CEQA documents, and this is a process that could take many months, if not years. Should this occur, the District would be left with 46 days of storage, 190 acres of land that requires 15.5 months to return to agricultural production, and 130 acres of agricultural land on which it could apply its effluent. The District has estimated it needs between 700 and 1000 acres to dispose of the WWTF design flows of 3.25 mgd.

The District's contention that the Central Valley Water Board has not required others to develop a "contingency plan" is misleading, because the City of Bakersfield and the Kern Sanitation authority both have adequate disposal capacity. The City of Bakersfield owns the land on which it recycles effluent from its Bakersfield No. 2 WWTF. Kern Sanitation Authority also owns the acreage on which it recycles its effluent. If the contract farmers that use the effluent cease farming activities, both the City of Bakersfield and the Kern Sanitation Authority can take over the operations and can continue to apply wastewater to this acreage. The District's contention that Bakersfield's disposal area is in a floodway and may be unusable during a flood event is also spurious. Over 3,000 of Bakersfield's 5,000 acres is outside of the 100-year flood plain, giving Bakersfield an adequate area to dispose of its effluent should the remainder of its acreage be briefly inundated during a flood event.

**District Comments – Comment No. 5:** The Corrected Petition Letter objects to the Tentative Orders because the District contends that they mandate that the District conduct a Proposition 218 process and require the citizens of Lamont to vote in favor of increasing sewer rates, due to the contention that the Tentative Orders impose significant new costs.

**RESPONSE:** As described above, the Tentative CDO only requires the District to obtain reliable disposal capacity for its WWTF discharges, and the Tentative CDO was drafted to give the District a great degree of flexibility in how to make those arrangements. The requirement amounts to prudent facility planning and implementation of adequate disposal capacity, and does not require the acquisition of additional land, though that might be a prudent course of action. The District may need to navigate the Proposition 218 process to finance the way it chooses to comply with the requirement to demonstrate that it has reliable treatment and disposal capacity, but that depends largely on how the District plans on complying with the Board's directive.

**District Comments – Comment No. 6:** The Corrected Petition Letter states that the proposed tentative WDRs and CDO force the District to incur expenses of \$8 to \$40 million to obtain property necessary for a "back up" or "alternative" to Community Recycling. The Letter also states that the tentative CDO is inappropriate in that it only allows one source of

compliance as an alternative to the continued use of Lamont's effluent for composting (e.g., that land be leased or purchased by Lamont, as opposed to the use of percolation ponds, treatment upgrades, or other means.)

**RESPONSE:** In light of the more recent flow information provided by the District Engineer, staff has modified the tentative WDRs and CDO item 3 to require the District to obtain reliable disposal capacity not for 3.25 mgd, but for projected flows associated with a reasonable planning period of approximately 20 years. Staff has also modified tentative CDO item 3 to remove any implication that the CDO restricts the District's compliance options to require that the District purchase land for effluent recycling. The District will be required to demonstrate that its chosen option is consistent with Central Valley Water Board and State Board policies, including those that encourage wastewater reuse. Staff has also changed the tentative WDRs to include limit effluent flows to 2.0 mgd. If the District pursues a disposal capacity option that provides more than 2.0 mgd of reliable disposal capacity, it will need to submit a new Report of Waste Discharge, and the proposed WDRs, if adopted, will need to be reopened and updated.

**District Comments – Comment No. 7:** The District states that the tentative orders presume the revocation of the CUP and, therefore, deprive the superior court judge the right to make a determination.

**RESPONSE:** The actions to adopt tentative WDRs and CDO are separate and distinct from the current litigation and in no way deprive the Kern County Superior Court judge of a right to make a ruling on whether the revocation of Community Recycling's CUP was legal. Regardless of the outcome of the litigation, the District needs to secure reliable disposal capacity for a reasonable planning period.

**District Comments – Comment No. 8:** The District requests that the TCDO be withdrawn or alternatively, that the compliance deadlines in Item 3 be extended twelve months from those proposed, so the District's litigation can be completed.

**RESPONSE:** For the reasons described above, Board staff have extended the proposed dates to allow the current litigation to be resolved, and to accommodate reasonable periods of time for investigation, planning, construction (if necessary), and for completing any needed CEQA process.

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## **COMMUNITY RECYCLING & RESOURCE RECOVERY (COMMUNITY RECYCLING), INC., COMMENTS**

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On 27 April 2012, T. Mark Smith, attorney at law, on behalf of Community Recycling & Resource Recovery, Inc., submitted comments on the tentative CDO.

**Community Recycling Letter – Comment No. 1:** Community Recycling’s letter states that the tentative CDO “disregards the [District’s] rights to litigate the legality of the revocation.”

**RESPONSE:** No change has been made to the tentative CDO. As described above, the tentative CDO is a separate and distinct action from the current litigation and in no way deprives the judge of a right to make a ruling on whether Kern County’s action to revoke the CUP was legal. Regardless of the outcome of the litigation, the District needs to secure reliable disposal capacity for a reasonable planning period.

**Community Recycling Letter – Comment No. 2:** Page 2 of Community Recycling’s letter states that the District “...should not be required to take action and expend significant resources...to identify and alternative means of disposal of wastewater currently by the composting facility while Superior Court action is pending.”

**RESPONSE:** Board staff has made changes to the tentative Orders to allow the Superior Court action to be resolved.

**Community Recycling Letter – Comment No. 3:** Page 3 of the Community Recycling’s letter requests that the deadline for the submittal of items requested by task 3.a. of the tentative CDO be extended six to twelve months from the proposed due date of 7 December 2012 in the tentative CDO to allow completion of Superior Court proceedings before the Central Valley Water Board requires the District to incur public funds in seeking alternative disposal methods.

**RESPONSE:** See response to District Comments – Comment Nos. 6 and 8, above.

**Community Recycling Letter – Comment No. 4:** Community Recycling’s letter states that it is aggrieved by the tentative CDO because it threatens Community Recycling’s lease agreement with the District.

**RESPONSE:** The tentative CDO only requires the District to secure reliable, adequate long term capacity. It presents no threat to the lease between the District and Community Recycling.

**Community Recycling Letter – Comment No. 5:** Community Recycling’s letter states it has the ability to alter its composting operation to allow it to take additional wastewater from the District. Such alterations include increasing the volume of woody material composted and/or utilizing forced aeration of the windrows. These two alternatives would increase the amount of wastewater used by Community Recycling by approximately 30 percent (or 2.5 mgd of wastewater). Community Recycling claims that the District has sufficient capacity to accommodate flows of 3.25 mgd and itemizes wastewater disposal as follows: 2 mgd for

agricultural land, 0.8 mgd evaporated/percolated, and 2.25 mgd used by the composting operation.

**RESPONSE:** In light of the flow information provided by the District Engineer above, and the fact that Community Recycling does not meter its wastewater use, the capacity numbers presented by Community Recycling are unreliable, and in no way demonstrate that the District has sufficient disposal capacity, with or without the composting operation. As described above under response to District Comments – Comment No. 4, the ability of Community Recycling to dispose of a particular volume of effluent is irrelevant, as the District cannot guarantee that Community Recycling will continue to accept its wastewater.

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### **CENTER ON RACE, POVERTY & THE ENVIRONMENT (CENTER) COMMENTS**

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Via email, on 23 April 2012, the Center submitted comments on its behalf and the behalf of the Committee for a Better Arvin regarding the time schedule requiring Lamont Public Utilities District to acquire additional Use Area.

**CENTER Letter – Comment No. 1:** The Center comments that it is inappropriate for the District's wastewater disposal needs to impede the immediate closure of Community Recycling. The Center recommends that the compliance dates in tentative CDO item 3 that require the District to acquire property for additional Use Area and to complete necessary CEQA actions be shortened by 12 months to December 2012 and February 2013, respectively.

**RESPONSE:** Due to the stay order issued by Kern County Superior Court, Community Recycling is not proceeding with site closure and the District's lack of reliable, adequate disposal capacity is not impeding the site closure. The dates have not been shortened. For the reasons described above under District Comments – Comment Nos. 6 and 8, tentative CDO item 3 has been modified and the compliance dates have been extended.

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### **CENTRAL VALLEY CLEAN WATER ASSOCIATION (CVCWA) COMMENTS**

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Via email on 27 April 2012, CVCWA submitted comments regarding redundant language found in the tentative WDRs and State Water Resources Control Board Order 2006-0003-DWQ for Sanitary Sewer Systems regarding remedial actions for sanitary sewer systems

**CVCWA Letter – COMMENT No. 1:** CVCWA's letter request that Provision 12 be deleted from the tentative WDRs.

**RESPONSE:** The change has been made.

**CVCWA Letter – COMMENT No. 2:** CVCWA's letter requests to modify the language in Provision 18 of the tentative WDRs to read as follows:

“The Discharger shall continue to maintain coverage under, and comply with Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ, the Revised General WDRs Monitoring and Reporting Program (Water Quality Order 2008-0002-EXEC), and any revisions thereto. Water Quality Orders 2006-0003 and 2008-0002-EXEC require the Discharger to notify the Central Valley Water Board and take remedial action upon the reduction, loss, or failure of the sanitary sewer system resulting in a sanitary sewer overflow.”

**RESPONSE:** The Provision has been modified as recommended.